

ESTTA Tracking number: **ESTTA693039**

Filing date: **09/01/2015**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Howard Berger Co., LLC
Granted to Date of previous extension	09/05/2015
Address	324A Half Acre Road Cranbury, NJ 08512 UNITED STATES
Correspondence information	William Spatz, Esq. Lucas & Mercanti, LLP 30 Broad Street New York, NY 10004 UNITED STATES info@lmiplaw.com, wspatz@lmiplaw.com Phone: 212-661-8000

Applicant Information

Application No	86539988	Publication date	07/07/2015
Opposition Filing Date	09/01/2015	Opposition Period Ends	09/05/2015
Applicant	Superior Heating & Air Inc. 36 Persimmon St. Suite 202 Bluffton, SC 29910 UNITED STATES		

Goods/Services Affected by Opposition


Class 011. First Use: 2014/00/00 First Use In Commerce: 2014/00/00 All goods and services in the class are opposed, namely: Air filters for domestic use; Air handlers; Air purifiers; Furnaces; Heat pumps; Household air cleaners; Humidifiers; HVAC units; Ventilators for domestic use

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
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Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	4077230	Application Date	06/13/2011
Registration Date	12/27/2011	Foreign Priority Date	NONE
Word Mark	COMFORT ZONE		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 011. First use: First Use: 1998/12/01 First Use In Commerce: 1999/01/01 Portable electric fans; Portable electric heaters

U.S. Registration No.	3123898	Application Date	06/13/2000
Registration Date	08/01/2006	Foreign Priority Date	NONE
Word Mark	COMFORT ZONE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 011. First use: First Use: 1998/12/00 First Use In Commerce: 1999/01/00 portable electric fans and portable electric space heaters		

U.S. Application No.	86433048	Application Date	10/23/2014
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	COMFORT ZONE		

Design Mark	COMFORT ZONE
Description of Mark	NONE
Goods/Services	Class 011. First use: First Use: 1998/12/00 First Use In Commerce: 1999/01/00 (Based on Use in Commerce) portable electric fans, ceiling fans, electric space heaters, kerosene space heaters, propane space heaters and humidifiers.; (Basedon Intent to Use) dehumidifiers and portable room air conditioners

U.S. Application No.	86508779	Application Date	01/20/2015
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	CCC COMFORT ZONE		
Design Mark			
Description of Mark	The mark consists of the words "ComfortZone" in black, preceded by a design comprised of 3 letters "C" of small, medium and large size. The small "C" is teal, the medium "C" is blue and the largest"C" is orange. The 3 letter "C"s are nested with the largest "C" encircling the medium size "C" and the medium size "C" encircling the small "C". The letters "C" alternate in direction with the small "C" opening to the left, the medium "C" to the right and the large "C" to the left. The white in the mark is background only and is not claimed as a feature of the mark.		
Goods/Services	Class 011. First use: First Use: 0 First Use In Commerce: 0 Portable electric fans, ceiling fans, electric space heaters, kerosene space heaters, propane space heaters and humidifiers		

Attachments	85344937#TMSN.png(bytes) 76071304#TMSN.png(bytes) 86433048#TMSN.png(bytes) 86508779#TMSN.png(bytes) NoticeOfOpposition.pdf(153926 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/William Spatz/
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Name	William Spatz, Esq.
Date	09/01/2015

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the matter of Application:

Serial No. 86/539,988
Filed: February 19, 2015
Applicant: Superior Heating & Air Inc.
Mark: SUPERIORAIR.INFO WHERE YOUR COMFORT ZONE COMES FIRST
Class 11

Published in the *Official Gazette* of July 7, 2015

HOWARD BERGER CO., LLC)	
)	
Opposer)	Opposition No. _____
)	Serial No. 86/539,988
v.)	
)	
SUPERIOR HEATING & AIR INC.)	
)	
Applicant)	

NOTICE OF OPPOSITION

In the matter of the above referenced trademark application (the “Opposed Application”), Howard Berger Co., LLC, a limited liability company organized in Delaware, having its principal place of business at 324A Half Acre Road, Cranbury, New Jersey 08512 (“Opposer”), believes that it will be damaged by registration of the mark shown in the Application (the “Opposed Mark”) and hereby opposes same.

The grounds for the opposition are as follows:

1. The Opposed Application was published in the *Official Gazette* on July 7, 2015. Opposer secured an extension of time until September 5, 2015 to file an opposition to the Opposed Application.

2. Opposer is the owner of U.S. Trademark Reg. No. 3,123,898 for COMFORT ZONE in stylized letters for “portable electric fans and portable electric space heaters”. This registration is valid and subsisting, in full force and effect and incontestable.

3. Opposer is the owner of U.S. Trademark Reg. No. 4,077,230 for COMFORT ZONE in block letters for “portable electric fans; portable electric space heaters”. This registration is valid and subsisting, in full force and effect.

4. Opposer is the owner of allowed U.S. Trademark Application No. 86/433,048 for COMFORT ZONE in block letters for “portable electric fans, ceiling fans, electric space heaters, kerosene space heaters, propane space heaters and humidifiers” based on use in commerce, and for “dehumidifiers and portable room air conditioners” based on intent to use in commerce. Trademark Application No. 86/433,048 was filed on October 23, 2014, which is prior to the February 19, 2015 filing date of the Opposed Application.

5. Opposer is the owner of allowed intention-to-use U.S. Trademark Application No. 86/508,779 for COMFORT ZONE & Design for “portable electric fans, ceiling fans, electric space heaters, kerosene space heaters, propane space heaters and humidifiers”. Trademark Application No. 86/508,779 was filed on January 20, 2015, which is prior to the February 19, 2015 filing date of the Opposed Application.

6. Since at least January 1999 and long prior to any use of the Opposed Mark, Opposer and its predecessors have used COMFORT ZONE for a line of heating and cooling products sold throughout the United States.

7. The mark COMFORT ZONE has been used and promoted extensively by Opposer and its predecessors in interstate commerce throughout the United States for many years such that the mark has acquired substantial goodwill, distinctiveness and secondary meaning for

heating, cooling and related products and serves to identify Opposer as the source of origin of a line of such goods.

8. The Opposed Mark as applied to Applicant's goods is confusingly and deceptively similar to Opposer's COMFORT ZONE trademark by virtue of its incorporation of the COMFORT ZONE mark in the Opposed Mark.

9. The goods in connection with which Applicant uses the Opposed Mark are closely associated with the goods in connection with which Opposer uses its COMFORT ZONE trademark and those in connection with which Opposer intends to use its COMFORT ZONE trademark whereby the use and registration of the Opposed Mark for Applicant's goods is likely to confuse and deceive the trade and purchasing public into believing that Applicant's goods originate with or are otherwise authorized, licensed or sponsored by Opposer. Further, the allowance of the Opposed Application for goods which are identical and closely related to Opposer's intention-to-use goods in its U.S. Trademark Application Nos. 86/433,048 and 86/508,779 is in violation of Opposer's constrictive use priority under § 7(c) of the Trademark Act.

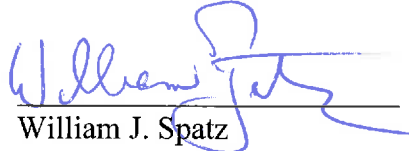
10. Applicant's goods are so closely related to the goods of Opposer that the use of Applicant's confusingly similar mark in connection therewith will result in a likelihood of confusion, to cause mistake or to deceive within the meaning of § 2(d) of the Trademark Act thereby damaging Opposer.

11. By reason of all of the foregoing, Opposer will be gravely damaged by the registration of the Opposed Mark.

WHEREFORE, Opposer respectfully requests that this Notice of Opposition be sustained and that registration of Opposed Mark to Applicant be refused.

HOWARD BERGER CO., LLC
By Its Attorneys
Lucas & Mercanti, LLP

By:



William J. Spatz

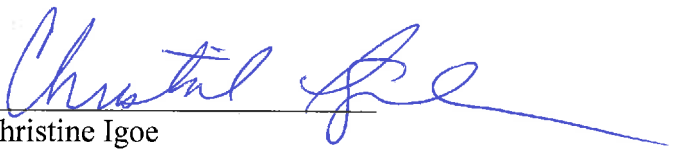
9/1/15

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Certificate of Service

I hereby certify that a true copy of the foregoing Notice of Opposition was served on Applicant, by depositing same in the U.S. Mail, first class postage pre-paid, this 1st day of September 2015 addressed to Applicant's counsel of record as follows:

Xavier Morales, Esq.
Law Office of Xavier Morales
PO Box 6510
San Antonio, Texas 78209-0510


Christine Igoe